IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 22ND OCTOBER 2007 / 30TH ASWINA 1929

Crl.MC.No. 8795 of 2002()

CC.681/2002 of JUDL. MAGISTRATE OF FIRST CLASS COURT, KUNNAMKULAM
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PETITIONER: ACCUSED

USMAN, KIZHAKKETHIL HOUSE,
PAZHUMANNA, KUNNAMKULAM.

BY ADV. SRI.DEEPU THANKAN

RESPONDENTS: COMPLAINANT AND STATE

STATE OF KERALA, REPRESENTED BY SUB INSPECTOR OF POLICE, KUNNAMKULAM, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 17/10/2007, THE COURT ON 22/10/2007 PASSED THE FOLLOWING:

CRL.M.C. NO.8795/2002

ORDER ON CRL.MP. 6826/2002 IN CRL.MC.8795/2002

DISMISSED

22.10.2007 **SD/- K.R.UDAYABHANU, JUDGE**

/TRUE COPY/

P.S. TO JUDGE

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K.R. UDAYABHANU, J.

CRL.M.C.NO. 8795 OF 2002

DATED THIS THE 22nd October 2007

ORDER

The petitioner, who is the accused in Crime No. 681/2002 of Kunnamkulam police station in the file of the Judicial First Class magistrate Court, Kunnamkulam with respect to the offence under Section 23 read with Section 20 of the Kerala Protection of River Banks & Regulation of Removal of Sand Act, 2001,(hereinafter referred to be 'the Act') has sought for getting quashed the above proceedings. It is alleged that the lorry of which the petitioner is the driver was seized by the Special Tahsildar on 15-5-2002 alleging that the sand is being transported without licence. The matter was referred to the Geologist, Thrissur District Mining & Geology Department. The petitioner was imposed with a fine of Rs.10,000/- and the mater was compounded. The Geologist has also directed the respondent, Sub Inspector to release the vehicle vide Annexure-C. Later, the Sub Inspector of Police registered a crime and the matter is pending before the Judicial First Class Magistrate Court, Kunnamkulam. It is submitted that the petitioner was already penalised by the Geologist and the second prosecution for the same offence is not maintainable. Further more, the Sub Inspector is not authorised as per Section 25 of

the Act. I find that as per Section 25 of the Act only the Geologist, District Collector or the person authorised in this behalf by the Government only can initiate prosecution. At the time the Sub Inspector of Police was not empowered to initiate proceedings in the matter, which is admitted by the Government Pleader as well. It is pertinent to note that on the particular date even the Rules for enforcement of the Act was not notified. As per Annexure-C the Geologist has mentioned that the petitioner has compounded the offence and fine realised as per Kerala Minor Mineral Concession Rules, 1967. In the circumstances, I find that the proceedings pending cannot be sustained. Hence, the proceedings pending vide Crime No.681/02 against the petitioner herein is herewith quashed. The Crl.M.C.is allowed.

Sd/-

K.R.UDAYABHANU, JUDGE

ks.

K.R.UDAYABHANU, J

CRL.M.C.NO. 8795 OF 2002

ORDER

22-10-2007